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T. J. [unclear]
C. [unclear]

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-189691

DATE: November 1, 1977

MATTER OF: Max R. Walton - Waiver of Overpayments of Pay

DIGEST: Reemployed annuitant was erroneously overpaid because of agency's administrative error in incorrectly estimating the amount of annuity allocable to period of employment. Employee was employed as consultant, worked irregular number of hours per pay period, and paychecks received varied greatly in amount. In such circumstances reemployed annuitant was not put on notice that he was being overpaid even though Standard Forms 50 issued upon appointment indicated salary would be reduced by approximate annuity allocable to period of employment. Therefore, claim for overpayments is waived under authority of 5 U.S.C. 5584.

Max R. Walton, a reemployed annuitant, appeals the denial by our Claims Division of his request for waiver of a claim against him by the United States for recovery of \$1,312.30 in erroneous salary payments.

The record shows that Mr. Walton received a temporary appointment as a reemployed annuitant effective July 2, 1973 (not to exceed September 30, 1973), as a Manpower Resources Program Manager grade GS-15, at a salary of \$34,971.00 per annum, at the Picatinny Arsenal, Dover, New Jersey. This appointment was converted to an Excepted Appointment-Intermittent effective September 30, 1973 (not to exceed September 29, 1974), as consultant, at \$134.48 per diem.

Under the terms of the appointment an amount equal to his Civil Service Commission retirement annuity was to have been deducted from his salary. The employing agency made an erroneous estimate of Mr. Walton's annuity and deducted that amount from his reemployment pay. Therefore, erroneous overpayments of \$1,312.30 were made to the employee from July 2, 1973, through April 19, 1975. The erroneous overpayments were discovered on April 18, 1975, when the agency received verification of Mr. Walton's annuity from the Civil Service Commission. The Finance and Accounting Officer at the Picatinny Arsenal informed the employee of the erroneous payments by letter of May 21, 1975.

The United States Army Finance and Accounting Center determined that Mr. Walton was at least partially at fault for not discovering

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the erroneous overpayments because the Standard Forms 50 that were issued to him incident to his appointments, indicated that his salary would be reduced by the approximate annuity allocable to the period of employment. Therefore, in its administrative report the United States Army Finance and Accounting Center recommended that Mr. Walton's request for a waiver of the overpayments be denied. Our Claims Division concurred and denied waiver of the overpayments of salary on March 29, 1977.

The Comptroller General is authorized by 5 U.S.C. 5584 to waive claims for overpayment of pay and allowances, other than travel and transportation expenses and allowances and relocation expenses, if collection would be "against equity and good conscience and not in the best interests of the United States." Such authority may not be exercised if there is "an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim." Implementing the statute, 4 C.F.R. 91.5(c) (1977), states in pertinent part that:

"* * * Any significant unexplained increase in pay or allowances which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances, ordinarily would preclude a waiver when the employee or member fails to bring the matter to the attention of appropriate officials. Waiver of overpayments of pay and allowances under this standard necessarily must depend upon the facts and circumstances existing in the particular case.* * *


We have held that this language applies not only to unexplained increases in pay, but also to receipt of an initial salary at a rate higher than expected and to continued receipt of the same salary when a reduction is expected. Matter of William White, B-186562, March 11, 1977.

The questions presented here are whether Mr. Walton knew or should have known that the Department of the Army had failed to reduce his salary by the correct amount of his annuity and whether he was put on notice that his salary was not reduced by the correct amount of his annuity by the statements in the Standard Forms 50 that his salary would be reduced by the approximate annuity allocable to the period of his employment

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The submissions show that the overpayments in question took place over a 2-year period and were made in a series of 34 payments. Since Mr. Walton was employed as a consultant, he worked on an irregular basis and his paychecks varied considerably in amount from pay period to pay period. The gross pay received by Mr. Walton for each biweekly pay period during the period covered by the erroneous overpayments varied in amount from a low of \$99.72 to a high of \$873.60 and the erroneous payments during this period varied in amount from an underpayment of \$10.66 to an overpayment of \$168.10. Accordingly, Mr. Walton was not put on notice that his paychecks were incorrect because the amount varied so greatly with each paycheck. The submissions also show that even after Department of the Army personnel discovered that an error existed and had received verification of Mr. Walton's correct annuity rates from the Civil Service Commission, they had difficulty in computing the correct amount of compensation to which Mr. Walton was entitled and the actual amount of the net overpayments. This is evidenced by the fact that the Finance and Accounting Officer first notified Mr. Walton by letter of March 26, 1975, that he had been overpaid in the amount of \$620.07, and later, by letter of May 21, 1975, he notified Mr. Walton that the overpayments had been recomputed at \$1,312.30. We do not believe that Mr. Walton knew or should have known that he was being overpaid merely because of statements in the Standard Forms 50 that his salary would be reduced by the amount of the approximate annuity allocable to the period of employment, especially since his salary had been reduced by the Department of the Army's estimate of the amount of his annuity allocable to the period covered.

Considering the above circumstances, we do not believe that the record establishes constructive knowledge sufficient to indicate fraud, misrepresentation, fault, or lack of good faith on Mr. Walton's part. In view of this and since the overpayments of pay resulted from administrative error, the indebtedness of \$1,312.30 is hereby waived under the authority of 5 U.S.C. 5584.


Acting Comptroller General
of the United States